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6 April 1978

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MEMORANDUM FOR: [REDACTED] Acting Legislative Counsel
FROM : [REDACTED]
SUBJECT : Reporting Unauthorized Disclosures of
Intelligence Information to the
Attorney General

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1. Section 4(a)(5) of EO 11905 of 18 February 1976 obligated senior officials of the Intelligence Community to "report to the Attorney General that information which relates to detection or prevention of possible violations of law by any person, including an employee of the senior official's department or agency." The EO also instructed (Section 7(b)) that in the event of any unauthorized disclosure of information concerning intelligence sources or methods, the names of any persons "found to have made unauthorized disclosures" should be forwarded to the Attorney General "for appropriate legal action."

2. There are some significant differences in the successor provisions contained in EO 12036 of 26 January 1978. Section 1-706 provides that senior Intelligence Community officials shall:

Report to the Attorney General evidence of possible violations of federal criminal law by an employee of their department or agency, and report to the Attorney General evidence of possible violations by any other person of those federal criminal laws specified in guidelines adopted by the Attorney General.

Note that the Section specifies possible violations of federal criminal law by employees, and of possible violations of those federal criminal laws specified in guidelines adopted by the Attorney General by any other person. Section 1-707, on the other hand, is much broader than former 7(b), and it adds another dimension to 1-706. Section 1-707 provides that senior

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Intelligence Community officials shall:

In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation.

3. Section 1-707 appears to obligate senior Intelligence Community officials to report serious or continuing security breaches to the Attorney General even if there is no indication that the Espionage Laws, the statute relating specifically to unauthorized disclosure of communications intelligence (i.e., 18 U.S.C. 793, 794, and 798), or any specific federal criminal law has been violated. The issue (which appears to have existed under EO 11905) of whether or not an unauthorized disclosure per se is a violation of law in the sense that it violates applicable executive orders having the force of law, has thus been removed. It no longer seems to matter, in other words, whether a serious security breach (such as an unauthorized disclosure) is a violation of law in general, or a violation of statutory federal criminal law. Section 1-707 can overlap with 1-706, but this does not necessarily have to be the case.

4. The addition of 1-707 may also help avoid the impasse which has tended to develop in the past when the DOJ and FBI made declassification of information for use in a possible prosecution a prerequisite to proceeding with an investigation. Section 1-707 appears to recognize that investigations of unauthorized disclosures can be important to the protection of intelligence sources and methods regardless of whether or not criminal prosecution is possible or desirable.

5. OGC is now working with the DOJ on the "guidelines" referred to in 1-706. The specifications of which federal criminal laws are to be the subject of Intelligence Community reporting to the Attorney General could blur the distinction between 1-706 and 1-707 somewhat if the list includes this Justice Department formulation: "violations of law involving willful disclosures of classified information intended to reach the public at large or a foreign power." Unauthorized disclosures could still be referred to the Attorney General under 1-707, however.

6. OGC is also working on revisions to Headquarters [redacted] The new version of [redacted] will contain a specific reference to 1-707, i.e., it will instruct all CIA components to report serious or continuing security breaches

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to OGC so that they can be referred to the Attorney General. New [] will continue to provide for direct liaison between the Director of Security and the FBI with regard to unauthorized disclosures, while under new [], OGC will be the channel for communications to the Attorney General under both 1-706 and 1-707.



Attachment

Memo to GC,
DDO, and OS

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